United Nations S/2002/923

Security Council

Distr.: General
13 August 2002

Original: English

Letter dated 8 August 2002 from the President of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994 addressed to the President of the Security Council

You will recall that in my letter dated 26 July 2002 addressed to you (S/2002/847), I brought to the attention of the Security Council the concerns of the International Tribunal for Rwanda regarding the non-cooperation of the Government of Rwanda with the International Tribunal in recent months.

Pursuant to that letter and in the light of the Rwandan Government's reply to the report of the Prosecutor of the International Tribunal dated 23 July 2002, I have the honour to bring to the attention of the Security Council, as an annex to this letter, a note by the International Tribunal for Rwanda on the Rwandan Government's reply. This note is submitted primarily for the information of the members of the Security Council.

(*Signed*) Judge Navanethem **Pillay**
President

02-52398 (E) 160802

BEST COPY AVAILABLE

Annex

Note by the International Tribunal for Rwanda on the reply of the Government of Rwanda to the report of the Prosecutor of the International Tribunal to the Security Council

I. INTRODUCTION

By a letter dated 26 July 2002 (S/2002/842) from the Permanent Representative of Rwanda to the United Nations addressed to the President of the Security Council, the Government of Rwanda forwarded a reply of the Rwandan Government to the report of the Prosecutor of the International Tribunal for Rwanda, dated 23 July 2002.

By a letter dated 26 July 2002 (S/2002/847) from the President of the International Tribunal for Rwanda addressed to the President of the Security Council, the President of the Tribunal, acting under Article 28 of the Statute of the Tribunal, brought to the attention of the Security Council the Tribunal's concerns regarding problems that the Tribunal has experienced in recent months with Rwanda's cooperation with the Tribunal. In particular, the Judges of the International Tribunal are concerned because the Rwandan Government's failure to issue travel documents in a timely manner to facilitate the appearance of witnesses before the International Tribunal has resulted in the unavailability of witnesses and, consequently, the postponement of three trials.

Further to the letter from the President of the International Tribunal for Rwanda, the Tribunal provides here below a factual recapitulation of events that constitute a failure by the Government of Rwanda to issue travel documents for witnesses in a timely manner.

In its letter dated 26 July 2002, the Government of Rwanda stated that its reply to the report by the Prosecutor of the International Tribunal "explains to the members of the Security Council the shortcomings of the International Tribunal for Rwanda namely, inefficiency, corruption, nepotism, lack of protection of witnesses, harassment of witnesses, employing *genocidaires* as members of defence teams and investigators, mismanagement, slow pace of trials, insufficient staff and lack of competent staff, negligence and false allegations concerning the Government of Rwanda".

The Tribunal believes that the non-cooperation by Rwanda, which has caused three trials to be postponed, is the immediate issue before the Security Council for its consideration

and appropriate measures, in order to ensure that the International Tribunal can discharge the mandate it has been given by the Security Council. However, considering that the Reply of the Government of Rwanda contains a number of statements on issues concerning the treatment and protection of witnesses and other aspects of the functioning of the Tribunal that require factual clarifications, and although issues such as management of the Tribunal are primarily within the competence of other organs of the United Nations, this Note has included such clarifications as deemed necessary for information purposes only. This Note is jointly endorsed by the three organs of the International Tribunal namely, the Chambers, the Prosecutor, and the Registrar.

II. NON-COOPERATION BY RWANDA

Unavailability of Witnesses

1. On Friday, 7 June 2002, eight prosecution witnesses who were to travel from Kigali to Arusha to give testimony in the Butare case and in the Niyitegeka case on 10 June 2002 were unable to leave Kigali with ICTR Registry officials because the Rwandan Director of Immigrations declined to issue the required Laissez-passers for the witnesses. The Director of Immigration informed the ICTR official who was to accompany the witnesses to Arusha that, in a sudden departure from existing procedures, Rwandan authorities had introduced a further requirement of Certificates of Attestation of "Good Conduct" and "Proof of Identity" of the witnesses, to be issued by the relevant District Office. Meanwhile, the survivors' organization IBUKA put a continuous announcement on Rwandan Radio of a boycott of the Tribunal and urged Rwandan citizens not to travel to Arusha to give testimony.

2. The Registrar urgently contacted the Prosecutor-General of Rwanda to ensure that the witnesses were cleared to travel. The Registrar was assured that a response would be provided by the Rwandan authorities by Monday, 10 June (in the meantime, the travel of the witnesses was postponed, and they returned to their homes). On 10 June, the Registrar, not having received any response from the Rwandan authorities, telephoned the Rwandan Prosecutor-General, who was reportedly unavailable as he was travelling out of the country.

3. On 10 June, Trial Chamber II (Butare case) requested an explanation from the Registry as to the unavailability of witnesses. A Registry representative provided a verbal report on the situation in open court. On the same date the Registrar apprised the Presiding Judge of Trial Chamber I (Niyitegeka case) of the situation regarding the inability of the witnesses to travel to Arusha.

4. Between 11 June and 13 June 2002, the Registry's Witness and Victims Support Section in Kigali made strenuous efforts to obtain valid Laissez-passers for the witnesses to travel to Arusha by 14 June, and succeeded in obtaining the documents for three of the eight witnesses.

5. On Friday 14 June, the Tribunal's aircraft was sent to Kigali to convey the witnesses to Arusha. However, Rwandan immigration officials again declined

to permit the travel of the witnesses. The Rwandan authorities verbally informed ICTR Registry officials of a new requirement for advance notification to the Director-General of Immigration of impending witness movement and of a new regulation allowing witnesses travel only after having been cleared by the Director-General. Efforts by the ICTR to obtain clearance from the Director-General were unsuccessful as the concerned officials were unavailable. After several hours, the ICTR aircraft returned to Arusha without the witnesses.

6. On the same date, the Tribunal gave notice in writing to the Director-General of Immigration informing him that movement of the three witnesses to Arusha would now take place on Tuesday 18 June. He was also requested to provide the Tribunal with a comprehensive letter detailing the new procedures and requirements for witness movement that the Rwandan authorities had put in place.

7. On Monday, 17 June, Tribunal Registry officials met with the Director-General of Immigration and requested movement of the three witnesses to Arusha on Tuesday 18 June. The Director-General informed the Tribunal officials that all Laissez-passers issued previously were null and void. He stated that under the new procedures, witnesses holding old valid Laissez-passers were now required to produce "Attestations of Non-Pursuit" before they would be allowed to travel outside Rwanda to give testimony at the Tribunal. These documents were obtainable either from the Provincial Prefecture Offices or the General Prosecutor of the Prefecture.

8. The Tribunal subsequently made strenuous efforts to obtain these attestations for the eight witnesses (several of them had by this time obtained the "Good Conduct" and "Proof of Identity" requirements). These efforts, however, achieved no success. In the meantime, the survivors' organization IBUKA continued to make constant announcements on Rwandan Radio urging non-cooperation between Rwandan citizens and the ICTR.

9. On 19 June 2002, Trial Chambers I and II of the ICTR issued Oral Decisions regarding the unavailability of witnesses, reiterating the obligations of the Government of Rwanda under the Statute of the Tribunal. These Decisions were promptly transmitted to the Government of Rwanda by the Tribunal's Registrar as instructed by the Trial Chambers.

10. The Prosecutor has also encountered difficulties in obtaining the transfer of detained witnesses. A detainee due to appear to testify in the Butare trial was scheduled to travel from Rwanda to Arusha in June 2002, pursuant to a Trial Chamber order under Rule 90 *bis* of the Tribunal's Rules of Procedure and Evidence. The request for the travel authorization concerning this detained witness was submitted to the Ministry of Justice on 7 June 2002, followed by a further letter of 12 June 2002. To date, and despite the direct intervention by the Prosecutor, the Minister of Justice has not signed the letter authorizing the witness' travel to Arusha. In the Niyitegeka trial, the Prosecutor requested from the Rwandan authorities almost two months ago the letter that is required to be submitted to the Tribunal, under Rule 90*bis*, for an order to transfer a detained witness. This letter has, to date, not been provided by the Rwandan authorities.

Furthermore, the Prosecutor is concerned by the fact that, over the last eight weeks, all requests sent to the Rwandan authorities to meet with this detained witness have proved unsuccessful and have recently been denied outright.

Impact of the Unavailability of Witnesses on Trials

11. As a result of the unavailability of witnesses, Trial Chamber I on 19 June 2002 postponed the Niyitegeka trial to 13 August 2002. On the same date Trial Chamber II postponed the Butare trial to 14 October 2002. Prior to the postponement of these trials, seven full trial days were lost in the Niyitegeka case and 19 trial days were lost in the Butare case due to the unavailability of prosecution witnesses.

12. From the foregoing, it is clear that the absence of cooperation from the Government of Rwanda, manifested in the failure to issue travel documents for witnesses in a timely manner, has severely disrupted and delayed trial proceedings at the ICTR, setting them back by several months.

13. At this time, there is no guarantee that the future trials scheduled to resume in the coming weeks will proceed smoothly, if the Rwandan authorities do not remove arbitrary impediments to the travel of witnesses. It is important that the Government of Rwanda resume cooperation with the Tribunal in an unambiguous manner.

14. The Prosecutor is deeply concerned by the situation. For the cases scheduled to resume in the coming months, she is planning to call witnesses from outside Rwanda in order to overcome temporarily the unavailability of witnesses from Rwanda. The Prosecutor is in effect having to call its witnesses according to their availability rather than in any chronological or strategic order. Of those witnesses in Rwanda who are in principle willing to co-operate with the ICTR, and who have in the past given statements to the Tribunal, the majority are only prepared to come and testify at the ICTR if the current crisis is resolved and if the survivors organisations (IBUKA and AVEGA) resume their co-operation with the ICTR.

15. It is noted that five prosecution witnesses travelled from Rwanda to Arusha on 2 August 2002. However, the Tribunal has not yet received the required cooperation from the Rwandan authorities concerning other witnesses, and also concerning other areas of cooperation, as highlighted hereunder.

Other Acts of Non-Cooperation

16. The Prosecutor is also very concerned by the fact that several requests for co-operation that she has addressed to the Rwandan authorities are still pending, unanswered.

17. On 13 March 2002, a request was addressed to the Rwandan Minister of Defence, for access to the archives of his Ministry and that specified documentation be made available.

18. On 13 March 2002, another request was addressed to the Minister of Defence for permission to make aerial, still pictures and video footage of certain named military barracks, of interest in the Bagosora case.

19. In March 2002, a request was addressed to the Director-General of Immigration for information on the passports issued to an accused person currently on trial. Although the Director-General initially responded that he would look into the matter, he responded on 10 June 2002, indicating that he required an authorization from the Minister of Justice in order to take necessary action. The Prosecutor sent a letter on 11 June 2002 to the Minister of Justice, requesting the said authorization. No response has been received to date, despite the direct intervention of the Prosecutor with the Minister of Justice.

20. In July 2002, a letter was sent to the Minister of Defence, requesting his authorization for a trial team to visit certain sensitive military sites under the Ministry of Defence. The trial team returned to Arusha without fully accomplishing its mission, owing to non-cooperation from the Rwandan authorities.

21. In July 2002, the authorization of the Chief Prosecutor of the Military Tribunal in Rwanda was sought to allow staff of the Office of the Prosecutor of the International Tribunal to meet certain detained witnesses in preparation for their testimony in pending cases. The authorization was not granted.

22. Regarding the investigations, in furtherance of the mandate of the International Tribunal, of crimes allegedly committed by members of the Rwandan Patriotic Army in 1994, the Prosecutor reiterates that, despite assurances given to her in the past, no concrete assistance has been provided to her Office in response to repeated requests regarding these investigations. Without the cooperation of Rwanda, the Prosecutor is unable, at this stage, to finalize these investigations.

23. Defence Counsel have also reported to the Trial Chambers instances of non-cooperation by Rwandan authorities over consultations with defence witnesses and access to archive information in Rwanda.

III. OTHER ISSUES RAISED IN THE GOVERNMENT OF RWANDA'S REPLY

Treatment of Witnesses

24. Section 2.5 of the Rwandan Government's report ("Treatment and Protection of Witnesses") states: "witnesses have long complained of mistreatment while in the care of the ICTR." The facts are different: **Every prosecution witness who travels to Arusha and comes under the care of the Witness and Victims Support Section-Prosecution (WVSS-P) is asked to complete an end-of-visit "service evaluation" questionnaire. The responses to each question in this questionnaire for all witnesses who completed it are recorded. Of the 206 witnesses supported by WVSS-P since 2000, a total of 64 per cent responded to the questionnaire as of April 2002. On all aspects of the**

WVSS-P's operation, over 91 per cent of these witnesses rated the care and service as either good or excellent. Further, for other important aspects such as security, 100 per cent of the witnesses evaluated the service as either good or excellent. Critics blur the distinction between the administrative treatment of witnesses (including travel and accommodation arrangements), their treatment while giving evidence in court and the follow-up after testifying. Complaints have been based mainly upon the adverse reaction of some witnesses to having their evidence challenged, sometimes robustly, during cross-examination in court, a procedure which does not exist in Rwandan courts. So far as is possible witnesses are prepared for their first experience in court beforehand and cross-examination is conducted under the supervision of the judges as to the relevance and appropriateness of questions put.

Protection of ICTR Witnesses

25. Over 80 per cent of ICTR witnesses are protected witnesses who testify anonymously and are given appropriate security protection before, during, and after testifying. It should be noted that the protection of Rwandan citizens within Rwandan territory is the responsibility of the Government itself. Where necessary, witnesses thought to be particularly at risk are relocated within or outside Rwanda. More than 500 witnesses have testified before the Tribunal so far. No case of a witness being attacked or killed because of their evidence has been reported to the Tribunal. Several former witnesses have succumbed to injury or disease and one violent death in circumstances wholly unrelated to the Tribunal was reported.

26. The measures recently introduced by Rwandan authorities for the travel of witnesses for the Tribunal have not only caused delays but have also potentially compromised protection measures adopted for their safety by requiring them to reveal the reason for their travel at the lowest level of administration in the locality of their residence. Attestations of "Good Conduct" and "Non-Pursuit" only increase the exposure of such witnesses, which should be reduced to the barest minimum in order to ensure the practical implementation of protection orders issued by the Tribunal for such witnesses. Prosecution witnesses from Rwanda have reported to the officials of the Tribunal's WVSS-P that these new regulations established by the Rwandan authorities are causing them concern for their security because they are being subjected to rigorous interviews that expose their identity and intent to testify. Furthermore, it has been observed that Rwandan officials question some witnesses seeking to travel to Arusha about the extent and nature of their testimony. These actions are incompatible with witness protection measures.

27. Section 2.5 of the Government of Rwanda's Reply quotes an Amnesty International report as stating: "The Victims and Witness Unit does not have any personnel with expertise and experience in the protection of witnesses at a national level."

(a) First, it should be noted that this Amnesty International report is dated April 1998 (AI Index: IOR 40/03/98), and describes the observations of an Amnesty delegation that visited the Tribunal in October 1997. The Amnesty report goes on to

note: "More staff with the relevant expertise and experience will soon be recruited to the Unit" (p. 18). This report is thus almost five years out of date and does not reflect the quality of staffing and expertise in the Tribunal's witness protection operations today.

(b) Second, the Amnesty report cited by the Government of Rwanda's Reply notes that an observed weakness in the ICTR's witness protection program at that time was that it "relies heavily on the Rwandese Government for the protection of witnesses" and that "the procedures demanded by the Rwandese Government to enable witnesses to travel to Arusha from Rwanda make it impossible to protect the identity of witnesses..." (p.18).

Slow Pace of Trials

28. This has been a constant cause for concern on the part of all those involved with the work of the Tribunal. Trials last generally for more than one year because of the great complexity of judicial proceedings involving witnesses and counsel from all over the globe while assuring that the highest standards of justice, and in particular the right of the accused to a fair trial, are maintained. Within those constraints the judges have constantly sought to streamline the Rules of Procedure in order to ensure that trials proceed as expeditiously as possible, and have assumed greater control of courtroom proceedings to increase the pace of trials. Changes to the Rules have helped to reduce the length of trials. At this time the greatest impediment to a faster pace of trials of detainees at the ICTR is the inadequate number of trial judges at the Tribunal. Thus, in July 2001 the President of ICTR presented a request to the Security Council for 18 *ad litem* judges to be appointed to ICTR in order to speed up the disposal of cases and to enable the Tribunal to complete its mandate by 2008. A decision by the Security Council on this request is expected soon.

29. There are currently 13 accused persons whose cases are ready for trial, but who must remain in detention awaiting trial because all the existing Trial Chambers are overburdened with ongoing trials and cannot take on new cases until these trials are completed. As of 31 July 2002, nine trials of 22 accused persons are in progress before the Trial Chambers. Each of the three Trial Chambers is adjudicating three trials on a rotation schedule.

Failure to Indict and Apprehend Genocide Suspects Still at Large

30. The Tribunal has indicted 80 persons to date. A total of 60 of these indicted persons were apprehended in 20 different countries and detained by the Tribunal, with eight persons already sentenced and one acquitted. The Tribunal thus has a strong record of arrests of indicted persons. Arrested persons (including some of those convicted) include the Prime Minister of the Interim Government of Rwanda, 11 Ministers of that Government in 1994, senior military officers, and other high ranking individuals.

31. The Prosecutor's investigators, with the cooperation of relevant States, are making sustained efforts to find and arrest indictees who are still at large. Indictees at large is a natural phenomenon of criminal investigations in every jurisdiction, as suspects usually do all they can to evade arrest.

Mismanagement

32. There is no problem of mismanagement at the International Criminal Tribunal for Rwanda. While the Tribunal faced management problems in its start-up phase in 1996, these problems have been progressively addressed through management reforms. The Tribunal is now an efficiently managed institution. These improvements have been acknowledged by a report of the Office of Internal Oversight Services, to which the Government of Rwanda refers[1], other management evaluations[2], and by the Government of Rwanda itself.

33. In its statement to the Fifth Committee (Administrative and Budgetary) of the General Assembly on the Financing of the International Criminal Tribunal for Rwanda and the International Criminal Tribunal for the Former Yugoslavia on 25 May 2000, the Rwanda Delegation stated, inter alia: "…. the ICTR, since its beginning experienced a lot of problems in finding its way of functioning efficiently due to internal administrative management difficulties as well as other external factors inherent to its operational conditions … However, during the last two years, we recognize some improvements and achievements of the Tribunal, in particular the reforms made by the Registrar".

34. Furthermore, the Members of the Advisory Committee on Administrative and Budgetary Questions undertook a mission to the Seat of the Tribunal at Arusha from 5-8 June 2002. The Committee reviewed various aspects of the management of the administrative and judicial support operations of the Tribunal and expressed overall satisfaction with the progress that has been achieved in the Tribunal's management.

35. The Tribunal has hired, and continues to hire, competent staff to fill vacancies. The budget of the ICTR for the biennium 2002-2003 was adopted by the General Assembly in April 2002. It appropriated 77 new posts to the Tribunal, bringing its staffing strength to a total of 942 posts. As of 31 July, and as a result of a continuing recruitment drive by the Tribunal's management, 796 posts are filled, giving the Tribunal a vacancy rate of 16 per cent. The remaining vacancies are projected to be filled by December 2002. Considering

[1] See Report of the Office of International Oversight Services on the follow-up to the 1997 audit and investigation of the International Criminal Tribunal for Rwanda (UN Document A/52/784), dated 6 February 1998. The report stated, inter alia, in its Summary: "Improvements were observed in virtually every area surveyed by the team of investigators and auditors". In para.6, the report stated: "Substantial changes have occurred in the Tribunal since the review by the Office of Internal Oversight Services in 1997".

[2] A report on the Evaluation of the Implementation of the Delegation of Authority in the Area of Human Resources – ICTR Progress and Evaluation, by the Office of Human Resources Management at United Nations Headquarters, dated 24 November 1999, concluded that the implementation of the Delegation of Authority to the Tribunal has been satisfactory. The Delegation to the Tribunal was extended to other areas of human resources management and cited as an example for extensions of delegations of authority to other overseas offices of the United Nations with similar organizational structures.

that the Tribunal's budget was approved just four months ago, and considering the average length of time recruitment takes in the Tribunal (three months), the statement in the Rwandan Government's reply "that the ICTR has simply failed to recruit staff" is not supported by the facts.

36. All staff members recruited by the Tribunal fully meet – and frequently exceed – the qualifications required for the positions they hold, as described in Vacancy Announcements. The Annual Personnel Report of the Tribunal for 2000 stated: "Recruitment indicators show that for the experience requirements, 87 per cent are above requirements, 13 per cent specifically meet the requirements and 0 per cent are below requirements" (page 31). Paragraph 97 of the Final Report of the Management Review of the International Criminal Tribunal for Rwanda, United Nations Department of Management, 22 May – 3 June 2001, states: "The conditions of service of ICTR are not considered by some staff to be competitive. In addition, the quality of life in Arusha and Kigali may not be attractive to some people. However, notwithstanding these conditions, ICTR has been able to attract qualified and experienced staff". As in every large organization, the performance of every staff member will not be equal, and thus a few staff may not meet performance expectations. In such cases, appropriate action is taken by the Tribunal's management.

Hiring of Perpetrators of Genocide as Members of Defence Teams

37. The Tribunal has not "hired and continues to hire perpetrators of genocide". No Tribunal staff member has ever been linked to or suspected of any of the crimes within the Tribunal's mandate. Potential staff of Rwandan nationality are carefully vetted by the Security Section before receiving an offer of employment. The cases to which the Government of Rwanda's Reply refers concern a very small number of defence team investigators and assistants who are engaged by lead counsel of defence teams and remunerated from the Tribunal's Legal Aid Fund. Two such persons who had been using false identities were arrested by the Tribunal and are awaiting trial. Three others whose background gave rise to serious concern (but insufficient evidence to justify arrest) were dismissed. One has been suspended pending investigations to establish whether the allegations regarding his involvement in the genocide can be substantiated. Screening measures have been tightened for defence teams and firm action will be taken whenever clear evidence emerges.

IV. CONCLUSION

38. The Security Council and the international community as a whole have rightly emphasized the importance of the work of the International Tribunal for Rwanda and the importance of the Tribunal completing its work expeditiously and with due regard to due process.

39. The International Tribunal believes that it has become similarly important for the Security Council to underscore the independence and impartiality of the Tribunal and the obligation of all States, including Rwanda, to cooperate with the Tribunal. It is only such cooperation and full respect for the independence

and impartiality of the Tribunal that will ensure the successful discharge of its mandate, including the conviction expressed in the preambular paragraphs of resolution 955(1994) of the Security Council, that the prosecution of persons responsible for serious violations of international law in Rwanda and its neighbouring states in 1994 would contribute to the restoration and maintenance of peace.